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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/941,164	08/28/2001	Amit Patel	967.060US1	4647

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SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. BOX 2938  
MINNEAPOLIS, MN 55402

EXAMINER

JIANG, SHAOJIA A

ART UNIT PAPER NUMBER

1617

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/941,164

Applicant(s)

PATEL ET AL.

Examiner

Shaojia A. Jiang

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 January 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-12.

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
SREENI PADMANABHAN  
PRIMARY EXAMINER  
Part of Paper No. 8 2) 3/5

***Advisory Action***

This Office Action is a response to Applicant's amendment and response after FINAL filed on January 7, 2003.

2. Applicant's proposed amended claims, for example, "a first aqueous phase ...a second phase" in proposed amended claims, and proposed new claims by presenting additional claims herein, i.e., a new composition that is separate and distinct from the composition originally filed in proposed new claims 13-19, present a new issue for search and consideration by the Examiner, and are not considered to place the application in better form for appeal.

5. Applicant's remarks filed January 7, 2003 with respect to the rejection of claims 1-12 are rejected under 35 U.S.C. 112, first paragraph, for containing new matter have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated October 1, 2002.

Applicant's remarks filed January 7, 2003 with respect to the rejection of claims 1-12 made under 35 U.S.C. 103(a) as being unpatentable over Esser (6,221,345), Palinczar (4,724,139), and Kasat et al. (5,424,070 ) have been fully considered but are unpersuasive for reasons of record stated in the Final Office Action dated October 1, 2002.

Again, Applicant's arguments that the combining cited references do not suggestion the combination have been considered but are not found persuasive.

As discussed in the Final Rejection, all active composition components herein are known to be useful in antiperspirant deodorant compositions according the cited prior art herein. It is considered prima facie obvious to combine them into a single composition to form a third composition useful for the very same purpose absent evidence to the contrary. At least additive therapeutic effects would have been reasonably expected based on the well-settled principle set forth *In re Kerkhoven* regarding combination inventions.

Moreover, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). See MPEP 2145. In the instant case, since each composition component herein is known to be useful in antiperspirant deodorant compositions according the cited prior art herein at the time the claimed invention was made, the knowledge to combine them into a single composition for the very same purpose is considered within the level of ordinary skill.

Further, the determination and preparation of cosmetic compositions in various known forms, e.g., cream, spray, and wipe or roll, are considered well within in the competence level of an ordinary skilled artisan, involving merely routine skill in the cosmetic art.

As discussed in the Final Rejection, the record contains no clear and convincing evidence of nonobviousness or unexpected results for the combination method herein over the prior art. In this regard, it is noted that the specification provides no side-by-side comparison with the closest prior art in support of nonobviousness for the instant claimed invention over the prior art.

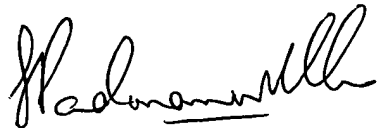
Therefore, motivation to combine the teachings of the prior art to make the present invention is seen and no impermissible hindsight is seen. The claimed invention is clearly obvious in view of the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

S. A. Jiang, Ph.D.  
Patent Examiner, AU 1617  
February 1, 2003

  
SREENI PADMANABHAN  
PRIMARY EXAMINER 2/3/03